

The Honorable Jamal Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA A. DIEMERT, an individual,

Plaintiff,

No. 2:22-CV-01640-JNW

V.

THE CITY OF SEATTLE, a municipal corporation,

Defendant.

JOINT STATUS REPORT AND DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 26(f), Local Civil Rule 26(f), and the Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (Dkt. #15), Defendant the City of Seattle and Plaintiff Joshua A. Diemert hereby submit this Joint Status Report and Discovery Plan.

1. Nature and Complexity of the Case

This is a single-plaintiff race discrimination, hostile work environment, and retaliation case based on federal and state law arising from Mr. Diemert's employment with the City of Seattle. Mr. Diemert asserts Defendant violated his rights under the Equal Protection Clause of the Fourteenth Amendment and discriminated against him under Title VII of the Civil Rights Act and under the Washington Law Against Discrimination when it subjected him to a hostile work environment and disparate treatment because of his race, retaliated against him when he reported the discrimination and constructively discharged him from employment. Defendant denies Mr. Diemert's claims and has moved to dismiss his complaint. Mr. Diemert has filed an opposition in

1 response. The parties filed a stipulated motion to dismiss Mayor Bruce Harrell, which this Court
 2 granted.

3 **2. Deadline for Joining Additional Parties**

4 The parties do not anticipate joining any additional parties, but propose that this Court set
 5 the deadline shortly after it has the opportunity to rule on the pending motion to dismiss.

6 **3. Consent to Assignment of Magistrate Judge to Conduct All Proceedings.**

7 No.

8 **4. Proposed Discovery Plan**

9 (A) Initial Disclosures.

10 The discovery planning conference under Fed. R. Civ. P. 26(f) was held on March 1,
 11 2023. The parties exchanged initial disclosures under Fed. R. Civ. P. 26(a)(1) on March 24,
 12 2023.

13 (B) Subjects, Timing and Phasing of Discovery.

14 The parties intend to conduct discovery into the factual bases for Plaintiff's causes of action
 15 and Defendant's defenses. The parties will conduct discovery according to the Federal Rules of
 16 Civil Procedure, the Local Civil Rules of the Western District of Washington, and this Court's
 17 Standing Order For All Civil Cases. The parties anticipate working cooperatively with respect to
 18 any discovery that may be needed or conducted. The parties foresee no need to phase motions.
 19 The parties do not believe this action should be bifurcated.

20 (C) Electronically Stored Information. The parties anticipate that this case will
 21 involve discovery of electronically stored information, including e-mails and social-media
 22 accounts and data. The parties will preserve potentially discoverable ESI and will work
 23 cooperatively to produce ESI in an accessible format.

24 (D) Privilege Issues. The parties will comply with applicable law regarding claims of
 25 privilege or confidentiality. At this time, the parties do not anticipate any unusual privilege
 26 issues. Each party will disclose responsive documents withheld from discovery on the basis of
 27 privilege in a privilege log. The log shall contain sufficient information to permit the other

1 parties to reasonably determine the likely validity of the privilege claimed. In the interest of
 2 avoiding undue burden, however, the parties agree that privilege logs need not include
 3 correspondence between attorneys and their clients, or correspondence between counsel for the
 4 defendant. The parties agree that the inadvertent production of documents protected from
 5 discovery by the attorney-client privilege, the attorney work product doctrine, or any other
 6 privilege will not waive such documents' privileged and protected status, and that the notice
 7 procedure in FRCP 26(b)(5)(B) for such inadvertent production shall apply.

8 (E) Limitations on Discovery.

9 (1) Depositions. Plaintiff anticipates at this time that he may require more
 10 than the federal rule's presumptive limit of ten (10) depositions, given the complexity of
 11 the fact-intensive nature of this case. Defendant does not agree that the complexity of
 12 this case warrants depositions in excess of the rules. The parties agree to work
 13 cooperatively to resolve any disputes related to discovery before involving the Court.

14 (2) Written Interrogatories. The parties anticipate the limitations on the
 15 number of interrogatories are appropriate in this case, and they will work together to
 16 reach mutual agreement in the event more are deemed necessary by a party, and to bring
 17 the matter to the Court only if agreement cannot be reached.

18 (F) Additional Discovery Orders.

19 (1) The parties intend to request entry of a stipulated protective order
 20 governing discovery and use of confidential information.

21 **5. Parties' Views, Proposals, and Agreements Regarding LCR 26(f)(1)**

22 (A) Prompt Case Resolution. The parties do not believe this case is amenable to early
 23 resolution.

24 (B) Alternative Dispute Resolution. The parties agree to engage in alternative dispute
 25 resolution efforts as appropriate pending discovery and pending rulings on current and
 26 anticipated dispositive motions.

27 (C) Related Cases. There are no related cases.

1 (D) Discovery Management. Discovery will be managed as described in Section 4
2 above.

3 (E) Anticipated Discovery Sought. See Section 4(B), (E), and (F) above.

4 (F) Phasing Motion. The parties do not anticipate a need for the phasing of motions.

5 (G) Preservation of Discoverable Information. The parties will use reasonable efforts
6 to preserve any known, relevant, active ESI and hard copy records within their possession,
7 custody, or control. The parties will comply with the Federal Rules of Civil Procedure and this
8 Court's Local Civil Rules pertaining to discovery and the preservation of discoverable
9 information.

10 (H) Privilege Issues. The parties agree that privilege issues will be handled as
11 provided in FRCP 26(b)(5).

12 (I) Model Protocol for Discovery of ESI. The parties do not anticipate the need for
13 significant production of ESI. The parties reserve the right to consider the propriety of using the
14 Court's Model Protocol for Discovery of ESI, if electronic discovery should be necessary.

15 **6. Bifurcation**

16 The parties agree that the case should not be bifurcated.

17 **7. Pretrial Statement/Pretrial Order**

18 The parties do not believe pretrial statements and a pretrial order should be dispensed of
19 in whole or in part.

20 **8. Individualized Trial Program/ADR**

21 The parties do not intend to participate in the Individualized Trial Program and have not
22 yet engaged in settlement discussions.

23 **9. Suggestions for Shortening/Simplifying the Case**

24 The parties have no other suggestions for shortening or simplifying the case at this time.

25 **10. Trial Date**

26 The parties propose a trial date be set within the time frame of March 2024, or at such
27 other time thereafter that is available on the Court's calendar.

1 **11. Jury Trial**

2 Mr. Diemert requests a jury trial. Defendant's deadline to demand a jury trial has not yet
3 passed.

4 **12. Trial Days**

5 The parties expect this case will require approximately 8 trial days, not including jury
6 selection.

7 **13. Trial Counsel**

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1 **14. Trial Date Complications**

2 At this time, the parties do not have any conflicts with a March 2024 trial date.

3 **15. Service**

4 Defendant the City of Seattle has been served. Plaintiff has agreed to dismiss Defendant
5 Mayor Bruce Harrell from this case.

6 **16. Scheduling Conference**

7 The parties do not believe that a scheduling conference prior to the entry of a scheduling
8 order in this case is necessary.

9 **17. Corporate Disclosure Statement**

10 Not applicable. Defendant City of Seattle is a governmental agency.

11 SUBMITTED this 7th day of April, 2023.

12 **PACIFIC LEGAL FOUNDATION**
13 Attorneys for Plaintiff Joshua A. Diemert

14 *Electronic signature added per email
15 authority on April 7, 2023:
By /s/ Laura M. D'Agostino*

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